

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

**ERIE COUNTY ENVIRONMENTAL
COALITION, et. al.,
Plaintiffs**

v.

**MILLCREEK TOWNSHIP SEWER
AUTHORITY, et. al.,
Defendants**

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**)CIVIL ACTION NO. 05-59 ERIE
)ELECTRONICALLY FILED**

**PLAINTIFFS' MOTION FOR LEAVE TO AMEND ITS MOTION FOR SUMMARY
JUDGMENT BY FILING APPENDIX AND
FILING AN AMENDED CONCISE STATEMENT OF MATERIAL FACTS**

Plaintiffs respectfully request that the Court grant Plaintiffs' Motion for Leave to Amend its Motion for Summary Judgment by filing a Concise Statement of Facts and Appendix in conformance with Local Rule L.R. 56.1. Plaintiffs state the following and have filed a Memorandum in Support thereof:

1. Plaintiffs filed its Motion for Summary Judgment on March 31, 2006.
2. Plaintiffs Motion failed to include a concise statement of facts as outlined in L.R. 56.1.B.1 of the Local Rules of Court for the United States District Court for the Western District of Pennsylvania.
3. However, Plaintiffs did aver facts in its Brief in Support of Summary Judgment.
4. Plaintiffs also failed to file an Appendix as outlined L.R. 56.1.B.3 of the Local Rules of Court for the Western District of Pennsylvania.
5. However, Plaintiffs did file as an attachment to the Brief in Support of its Motion for Summary Judgment exhibits supporting facts relied upon in the brief and incorporated by reference documents Plaintiffs previously filed in this case.

6. Attorney Jennifer Murphy did consult the Local Rules prior to filing Plaintiffs dispositive motion, but relied upon the paper version afforded to her at her admission ceremony dated July 31, 2003. L.R. 56.1 was not enacted until after that version of the Rules. Attorney Murphy failed to check for updates on the Court's website.
7. Attorney Murphy failed to recheck the Case Management Order to determine any specific requirements for filing a Motion for Summary Judgment.
8. This case is Mid-Atlantic Environmental Law Center's only case before the Western District of Pennsylvania.
9. Defendants Millcreek Township and Millcreek Township Sewer Authority filed its Motion for Summary Judgment on March 31, 2006.
10. Defendant filed with their Motion a Concise Statement of Material Facts and an Appendix.
11. Attorney Murphy reviewed Defendants' Concise Statement of Facts but assumed it was filed in preparation of the joint concise statement of material facts that is to be filed on April 27, 2006.
12. On April 20, 2006 Defendants' filed its Response to Plaintiffs' Motion for Summary Judgment.
13. Prior to filing Plaintiffs' Response to Defendants' Motion, Attorney Murphy briefly reviewed Defendants' filing, which alleged that Plaintiff had failed to file the procedure set forth in L.R. 56.1. This is the first point at which Attorney Murphy had realized her error.

14. On April 20, 2006, Plaintiffs filed its Brief in Opposition of Defendants' Motion for Summary, a Responsive Concise Statement of Facts, and its Concise Statement of Facts.
15. Attorney Murphy recognizes the seriousness of such an error and does not want to jeopardize her clients' cases as well as her own professional standing.
16. Allowing Plaintiffs to file an Appendix and a Concise Statement of Facts will not delay disposition of this case. Plaintiffs are prepared to immediately file these documents, and briefing on Summary Judgment has not yet closed.
17. Additionally, if the Court grants Plaintiffs' request, Defendants will not be prejudiced because the contents of the Appendix are documents that have been previously presented to both Defendants and the Court. Also, both parties are cooperating in preparing the joint statement of material facts.

WHEREFORE, for the reasons set forth above, Plaintiffs respectfully request that the Court grant Plaintiffs leave to file an Appendix and an Amended Concise Statement of Facts that include citations from the Appendix.

Respectfully submitted,

s/ Jennifer A. Murphy
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CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing document by electronic means utilizing the Court's CM/ECF system that will serve notice of electronic filing to Mark J. Shaw, Esq., McDonald, Illig, Jones & Britton, LLP, Attorney for Defendants on this 21st day of April, 2006.

/s/ Jennifer A. Murphy
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